IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO.350 OF 2001
(Old No.2147 of 1986)

Ashok Kumar S/o Sudershan Kumar,
R/o Badripur Parwa Doon,
P.S. Claimant Town, Distt. Dehradun

...Appellant

Versus

State

...Opposite Party

Dated: April 23, 2007

Sri Z.U. Siddiqui, learned consul for the appellant
Sri Amit Bhatt, leaned Additional G.A. for the State

HON. DHARAM VEER, J.

This appeal has been preferred against the order dated 28.07.1986 passed by Additional Sessions Judge Dehradun in Sessions Trial No.89 of 1985, State Vs. Sipla on the ground that the appellant was the surety of the accused and the accused was not produced before the Court and he has not shown any cause against the show cause notice issued to him in which it was asked as to why the amount of bond be not recovered from the him.

2. The surety bond was forfeited by the learned Additional Sessions Judge and the issued a recovery warrant against the appellant. Against the said order, the appellant Ashok Kumar has filed the present appeal.

3. I have heard Sri Z.U. Siddiqui, learned counsel for the appellant and Sri Amit Bhatt, learned Addl. G.A. for the State.

4. Learned counsel for the appellant Sri Z.U. Siddiqui could not point out any mistake in the impugned order and he has only submitted that the amount of the penalty may be reduced. Section 446 of Code of Criminal procedure (hereinafter to be referred as 'Cr.P.C.') provides for procedure when bond has been forfeited, which reads as under:-

446. Procedure when bond has been forfeited (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited.

Or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited.

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation – A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to sox months.]

(3) The Court may [after recording its reasons for doing so],remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond.

or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

5. Sub-section (1) of Section 446 of Cr.P.C. makes it clear that the court shall record the ground of such proof and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Sub-Section (2) of Section 446 provides that if sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code.

6. From a perusal of the above quoted section as well as the order passed by learned Additional Sessions Judge, it is established that learned Additional Sessions Judge has rightly issued the notice to the appellant, as the appellant has not shown the sufficient reason as to why the amount should not be recovered from him. Hence, the surety bond was rightly been forfeited and the recovery warrant was also rightly been issued against him.

7. Therefore, the order passed by the learned Additional Sessions Judge is correct and justified and as per the above provision of law. I do not find any illegality in the impugned order dated 28.07.1986 passed by learned Additional Sessions Judge.

8. Hence, the appeal is devoid of merit and is hereby dismissed. Interim order dated 11.08.1986 is hereby vacated.

(Dharam Veer, J.)

Rajeev Dang